1-17-2025

Speaker Cameron Sexton

425 5th Avenue North

Cordell Hull Bldg.

Nashville, TN 37243

RE: TDEC Vs Tellico Plains

Fine Sir,

The Tennessee Department of Environment and Conservation (TDEC) entered an administrative Order and Assessment against the Town of Tellico Plains on March 19th, 2024 for alleged violations of the Safe Drinking Water Act (SDWA) which fined the Town $25,542.40. Tellico hired representation and today filed a Motion to dismiss the assessment as void and a supporting brief which details how TDEC's actions violate both the State and Federal Constitutions. The Motion and Brief are attached herewith.

Our government being constituted for the benefit of man must pass no law which violates the founding documents of our State and our Nation. For far too long powers rightfully placed within the legislative and Judiciary branches have been seized by the Executive branch which has upset the delicate balance of powers between the branches. I implore you to lead the House in all efforts necessary to restore legislative powers to the legislative branch and judicial powers to the judicial branch of this State. Any Federal statute which violates separation of powers must not have any weight whatsoever in this State. James Madison, author of the US Constitution, in Federalist No. 51, 1788, states "The accumulation of all powers, legislative, executive and judicial in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny". Please see our Attorney's brief which details specific sections of Tennessee Code Annotated which have been identified as unconstitutional and TDEC is currently using to violate the Rights of more than 6,000 Monroe County Citizens.

I must also draw your attention to another concerning issue which is likely related to the issuance of the aforementioned administrative Order against the Town of Tellico Plains. TDEC and the Operator certification Board established at T.C.A. 68-221-901-915 have the duty to certify operators of Water and Wastewater systems to protect public health and the environment. We have a shortage of operators in the State, and this has been ongoing for years. Multiple municipalities and Utility districts across the State have been affected and in 2019 the Operator Certification Board convened a Stakeholder's committee to advise the Board on how best to proceed with Certification exams for operators. Pass rates for the higher grades of certification were very low in the 20-30% for some grades for years, which was in no small part a primary cause for the lack of

certified personnel in the State. As a private consultant to water systems and someone holding the highest Water treatment license in the State, I was appointed to serve on the stakeholder committee. I wrote a letter to Chairman Keisling on Feb 24th, 2020 which detailed the stakeholder committee's recommendations to the board as Chairman Keisling had expressed concern on this topic as it had been brought to his attention by his constituents. TDEC had clearly wanted the stakeholder committee to recommend certification exams be provided by a third-party company, but this was not accepted by the stakeholder committee and was unanimously rejected by all members of the committee. The Board accepted this recommendation and directed TDEC to develop new exams. In early March 2024, I attended a Tennessee Association of Utility District (TAUD) conference in which Jennifer Dodd the now former Director of Water Resources for TDEC gave a presentation on Operator Certification exams. She announced TDEC was moving forward with the same third-party exams for operators which had been previously rejected by the Stakeholders committee. I asked a series of questions in this meeting making clear that not all of Director Dodd's statements in her presentation were factual nor was this direction in the best interests of Citizens of Tennessee. I wrote a letter to Chairman Keisling on this disturbing turn of events on March 14th, 2024. The Order against Tellico Plains was issued on March 19th, 2024. Director Dodd resigned a few weeks later.

Perhaps you believe in coincidence. I do not. Further, as someone who worked for TDEC for nearly ten years and who has now helped water systems provide safe water to Citizens for over twenty years in multiple States, I have seen how TDEC operates. Our operators, municipalities, and utility districts work in an environment in which questioning of TDEC will most certainly result in retaliation. I could site numerous systems and individuals who have experienced executive branch overreach not to protect public health but to demand unquestioning compliance with TDEC authority whether TDEC's directives were legally or scientifically sound. Prior to the aforementioned Order Tellico Plains was directed in 2023 to issue a public notice to all customers stating they had failed to monitor for lead and copper two years earlier when they had in fact monitored and all results were non-detect for lead and extremely low for copper or non-detect. This was due to TDEC staff not knowing what their own Rules state and ludicrous interpretations to the point of making water systems issue false public notices to customers which only serve to undermine the public's perception of their water systems. I wrote a letter to TDEC informing them I would not issue a false statement to their customers as the current certified operator and detailed how they failed to understand their own Rule requirements. TDEC failed to even write a letter back and had a staff member call me to inform me they decided I was correct and didn't have to issue a public notice. It's unclear if they are still making other systems issue false statements to their customers but it is likely.

My belief is that it is the unlawful concentration of powers into the executive which has allowed TDEC to become tyrannical. Bureaucrats in TDEC do not have to be knowledgeable scientifically or legally as to their authorities when they cannot be

questioned without fear of reprisal and current statutes allow them authority to fine without judicial branch involvement. This type of executive branch breeds incompetent staff whose loyalties must be to the administrative State instead of Civil Servants working for the good of the people. James Madison Federalist No. 51, 1788 “The great security against a gradual concentration of the several powers in the same branch, consists in giving to those who administer each branch, the necessary constitutional means, and personal motives, to resist encroachments of the others…Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place”. Ambitions of the States legislatures have been successfully thwarted by federal dollars passed directly to executive branch state governments. TDEC staff are very concerned with compliance with EPA bureaucrats but have shown little regard for elected State Representatives expressing concern over their actions. TDEC claimed changes in the certification exams for operators were required because if exams didn’t have psychometric evaluations, they would lose funding due to Federal requirements. This was inaccurate and not legally binding guidance issued by EPA bureaucrats. Yet TDEC’s bureaucrats eagerly moved forward over the objections of stakeholders and State Legislators showing their true allegiance.

I urge you to reassert the Ambition of the General Assembly to protect the Citizens of our great State against tyranny of the executive. Seek out any statutes which grant authority of the executive to fine Citizens without the involvement of the Judiciary and repeal them immediately. Require the State’s executive branch to provide constitutional legal training to employees. The rank and file likely do not know they are violating the Rights of their fellow Citizens. Require all fees collected by TDEC to be utilized for the purpose for which the fee was paid or purposes defined by the legislative branch. Consider if the legislative branch truly has enough control over the Rule making process. Rules have the same effect as statutes unless they conflict with a statute. Does a large omnibus bill to pass regulations give legislators enough oversite of the Rule making process?

Sincerely,

Troy D. Taubert

Roaring River Consulting

Utility Manager- Tellico Plains